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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/052,746	01/18/2002	Alex Lobovsky	050-00-007	3263

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Honeywell International, Inc.
Law Dept. AB2
P.O. Box 2245
Morristown, NJ 07962-9806

EXAMINER

COLE, ELIZABETH M

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 05/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

28 ML

Office Action Summary

Application No.

10/052,746

Applicant(s)

LOBOVSKY ET AL.

Examiner

Elizabeth M. Cole

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– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 and 26-45 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-24 and 26-45 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. <u>050305</u> |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

1. Claims 1-24, 26-45 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification as originally filed does not teach that the air pocket is formed when a microcell is trapped internally within a fiber, but rather teaches that microcells can increase the volume of the air pockets, (see paragraph 0022 of the specification).

2. Claims 1-4, 7-22, 26-43, 45 rejected under 35 U.S.C. 103(a) as being unpatentable over Largman, U.S. Patent No. 5,057,368 in view of McGregor et al, U.S. Patent No. 5,571,592. Largman discloses a fibrous insulation material comprising a plurality of fibers having a non-circular cross section comprising a plurality of lobes. Largman teaches that such fibers produce superior insulation because of their high loft and reduced tendency to pack. See col. 3, lines 43-57. The fibers may be formed from a variety of polymers, including those claimed. See col. 5, line 40 – col. 8, line 22. The fibers of Largman may comprise T-shaped lobes wherein each lobe comprises a leg and a cap defining at least one intra-fiber void. Measuring the distance between the adjacent caps from the two innermost end points, the diameter of the void is larger than the distance between the adjacent caps. See figs 1 and 2. The fibers may be formed by spinning. See col. 5, lines 40-46. Largman differs from the claimed invention

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because Largman does not disclose incorporating a plurality of expandable microspheres into the fibrous material. McGregor et al teaches that incorporating expandable microspheres into a fibrous insulation material and then expanding the microspheres such that the microspheres are retained in place enhances the insulating properties of the insulation due to the improvement in the loft of the insulation. See abstract. McGregor teaches that the microspheres may have a variety of shapes including tubes, ellipsoids, cubes, particles, and other such shapes. See col. 6, lines 9-11. McGregor teaches that the microspheres may be applied onto fibrous insulation through the use of air. See col. 5, lines 16-25. McGregor teaches that EXPANCEL microspheres may be used, which correspond to the claimed microspheres. See col. 4, line 53 – col. 5, line 7 of McGregor as well as page 11, paragraph 028 of the instant application. With regard to claim 43, while the references do not teach concurrently spinning the fibers and applying the microspheres, it is noted that it has been held that a continuous operation of a process is obvious in light of a batch process set forth in the prior art. *In re Dilnot*, 319 F.2d 188, 138 USPQ 248 (CCPA 1963). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have performed the various steps of the process continuously. It would have been obvious to have incorporated the expandable microspheres into the insulation of Largman et al. One of ordinary skill in the art would have been motivated to incorporate the expandable microspheres into the insulation of Largman, motivated by the expectation that this would further enhance the insulation properties of the insulation by improving the loft of the insulation. Since McGregor teaches that the microspheres

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should be expanded to a size which fixes them in place, it would have been obvious to have expanded the microspheres so that they were held between and within the voids. With regard to the limitation that at least one air pocket is capable of forming within said composite material when the microcell is entrapped internally within a fiber, since McGregor teaches employing the microspheres in order to improve loft within fibrous insulation materials, the air pocket would be formed.

3. Claims 5-6, 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Largman in view of McGregor as applied to claims above, and further in view of Huey et al, U.S. Patent No. 4,636,234. Largman does not disclose employing mineral fibers such as a glass to make the shaped fiber insulation. Huey et al discloses that mineral fibers such as glass may be formed into shaped fibers and used to form insulation. See col. 1, line 12 and the figures. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have employed shaped fibers formed from mineral fibers such as glass in the insulation material of McGregor. One of ordinary skill in the art would have been motivated to employ the mineral fibers by the teaching of Huey that such fibers have particular use as insulation materials.

4. Claim 44 is rejected under 35 U.S.C. 103(a) as being unpatentable over Largman in view of McGregor as applied to claims above, and further in view of Graham, U.S. Patent No. 6,332,234. Neither Largman nor McGregor teach the step of electrostatically charging the fibers. Graham teaches that fibers are more easily collected by electrostatically charged fibers. Therefore, it would have been obvious to one of

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ordinary skill in the art at the time the invention was made to have employed electrostatically charged fibers when forming the insulation material of McGregor, motivated by the expectation that this would enhance the adhesion of the particles to the fibers, especially before the particles were expanded.

5. Claims 12, 13, 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Largman over McGregor as applied to claims above and further in view of Dalton et al, U.S. Patent No. 5,753,166. Although Largman teaches employing shaped fibers comprising lobes, Largman does not disclose the claimed shape factor. Dalton et al teaches at col. 4, line 60 and col. 6, lines 57-60, that fibers having a shape factor up to 4 are suitable for use in insulation products. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have employed fibers having shape factors up to 4 in the insulation of Largman. One of ordinary skill in the art would have been motivated to employ fibers having a shape factor up to 4 in the insulation of Largman because Dalton teaches that a high shape factor correlates with good shape retention of the fibers. See col. 3, lines 39-40.

6. Applicant's arguments filed 2/17/05 have been fully considered but they are not persuasive.

7. Applicant argues that Neither Largman nor McGregor teach or fairly suggest either the microcells being engaged in an intra-fiber void or an air pocket being formed by this engagement. However, McGregor teaches incorporating expandable microspheres into fibrous insulation in order to increase the loft of the fibrous insulation. Therefore McGregor teaches that the microspheres form air pockets.

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8. Applicant argues that Largman does not teach combining the fibers with another material and therefore does not teach a composite material. However, the motivation to combine the fibers with the microspheres of McGregor is found in the fact that both references relate to insulation materials. Further, McGregor teaches a way to improve known fibrous insulation. Largman was a known fibrous insulation material. Therefore, the motivation to incorporate the microspheres of McGregor into the fibrous insulation material of Largman is found in the McGregor reference. It is not simply that the examiner has asserted that the two references can be combined, but rather that the references themselves suggest the combination since McGregor teaches a way of improving fibrous insulation and Largman discloses a known type of fibrous insulation.

9. Applicant argues that the examiner has not shown why a person of ordinary skill in the art would be motivated to select the fiber material of Largman and add the microspheres of McGregor. However, Largman teaches an improved type of fibrous insulation which has improved insulation due to the use of lobed fibers which result in improved loft. McGregor teaches that incorporating microspheres into known fibrous insulation materials improves insulation by improving the loft of the fibrous insulation. Therefore, the person of ordinary skill in the art would necessarily seek to form a lofty insulation material would have been motivated to combine the teachings of Largman and McGregor.

10. Applicant argues that employing the microspheres would destroy the filtering and wicking properties of Largman. However, Largman also discloses insulation materials. Therefore, combining the references would not destroy the Largman material. ~~§~~

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11. Applicant asserts that claims 5,6,23,24, 44, 12, 13, and 28 are all separately patentable, but does not provide additional arguments for these dependent claims, therefore the rejections of these claims are maintained for the reasons of record.

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth M. Cole whose telephone number is (571) 272-1475. The examiner may be reached between 6:30 AM and 6:00 PM Monday through Wednesday, and 6:30 AM and 2 PM on Thursday.

Mr. Terrel Morris, the examiner's supervisor, may be reached at (571) 272-1478.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

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Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

The fax number for all official faxes is (703) 872-9306.



Elizabeth M. Cole
Primary Examiner
Art Unit 1771

e.m.c